

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.32 Motion in Limine—Impeachment of Defendant by His or Her Silence

Insert the following case summary on page 74 after the first paragraph of the discussion section:

Where a defendant's nonresponsive conduct or silence is not attributable to the defendant's invocation of his Fifth Amendment or *Miranda* rights, the defendant's nonresponsive conduct may properly be admitted at trial as substantive evidence of the defendant's consciousness of guilt. *People v Solmonson*, ___ Mich App ___, ___ (2004). In *Solmonson*, the police found the defendant unconscious in the driver's seat of a vehicle parked on the side of the road. *Solmonson, supra* at ___. Testimony at trial established that the keys were in the car's ignition, the car's engine was still warm, and the defendant did not deny being the car's driver. *Solmonson, supra* at ___.

The defendant objected to the admission into evidence of statements he made at the scene and to the prosecutor's argument that the defendant's failure to deny being the driver of the vehicle was a tacit admission of guilt. *Solmonson, supra* at ___. The Court of Appeals concluded that the defendant's failure to deny being the driver was not a tacit admission of guilt because the defendant's silence did not follow an assertion in "which the [defendant] manifested an adoption or belief in its truth." MRE 801(d)(2)(B); *Solmonson, supra* at ___. Rather, the statements the defendant made during the police officer's administration of field sobriety tests—"This is bullshit" and "Just take me to jail"—coupled with the defendant's failure to deny being the driver of the car, were properly admitted against the defendant at trial as evidence of the defendant's awareness that his conduct was unlawful. *Solmonson, supra* at ___.

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

2. Searches Incident to Valid Arrest

Insert the following case summary near the middle of page 90 after the first paragraph of subsection (2):

**New York v Belton*, 453 US 454 (1981).

A police officer may lawfully search an individual's vehicle incident to that individual's arrest, even when the officer's first contact with the arrestee occurs after the individual has gotten out of the vehicle. *Thornton v United States*, 541 US ___, ___ (2004). In *Thornton*, the defendant contested the admissibility of evidence obtained from the officer's search of his car when the officer who arrested the defendant did not address him until he was already out of, and away from, his vehicle. *Thornton, supra* at ___. The United States Supreme Court disagreed with the defendant's argument that a search incident to arrest under *Belton** "was limited to situations where the officer initiated contact with an arrestee while he was still an occupant of the car." *Thornton, supra* at ___. According to the Court:

"In all relevant aspects, the arrest of a suspect who is next to a vehicle presents identical concerns regarding officer safety and the destruction of evidence as the arrest of one who is inside the vehicle. An officer may search a suspect's vehicle under *Belton* only if the suspect is arrested. . . . The stress [and the risk of danger to the police officer] is no less merely because the arrestee exited his car before the officer initiated contact, nor is an arrestee less likely to attempt to lunge for a weapon or to destroy evidence if he is outside of, but still in control of, the vehicle. In either case, the officer faces a highly volatile situation. It would make little sense to apply two different rules to what is, at bottom, the same situation [internal citations omitted]." *Thornton, supra* at ___.

The Court further reasoned:

"*Belton* allows police to search the passenger compartment of a vehicle incident to a lawful custodial arrest of both 'occupants' and 'recent occupants.' Indeed, the respondent in *Belton* was not inside the car at the time of the arrest and search; he was standing on the highway. In any event, while an arrestee's status as a 'recent occupant' may turn on his temporal or spatial relationship to the car at the time of the arrest and search, it certainly does not turn on whether he was inside or outside the car at the moment that the officer first initiated contact with him [internal citations and footnote omitted]." *Thornton, supra* at ___.